

P.E.P. asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse's decision regarding Ms. P.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. P. seeks workers' compensation benefits from Park City Family Healthcare and its insurance carrier, Workers Compensation Fund (referred to jointly as "Healthcare" hereafter), for thoracic and left arm injuries allegedly caused by a work-related accident at Healthcare on February 19, 2003. Judge La Jeunesse held an evidentiary hearing on Ms. P.'s claim on June 3, 2004, and then, after various intermediate adjudicative steps,¹ referred the medical aspects of the claim to an impartial medical panel.

The medical panel submitted its report on February 16, 2006. In summary, the panel opined that while Ms. P. had suffered a thoracic strain from the accident at Healthcare, her left arm problems were not caused by the accident. On March 6, 2006, Judge La Jeunesse accepted the medical panel's opinion and awarded benefits for Ms. P.'s thoracic injury, but denied benefits for her left arm problems.

Ms. P. now asks the Commission to review Judge La Jeunesse's decision. Ms. P. argues that, contrary to the medical panel's opinion, the preponderance of evidence establishes that her accident at Healthcare caused her left arm injuries. Ms. P. also argues that Dr. Swenson's service on the medical panel taints the panel's opinion. Finally, Ms. P. objects to activities of Healthcare's representatives in investigating Ms. P.'s claim.

FINDINGS OF FACT

The Commission affirms and adopts Judge La Jeunesse's findings of fact.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-401 of the Utah Workers' Compensation Act requires employers to pay workers' compensation benefits to employees injured by accident "arising out of and in the course of" their employment. In other words, only work-related injuries are compensable under the Act, and injuries are not work-related unless the work is both the "legal" and the "medical" cause of injury. Allen v. Industrial Commission, 729 P.2d 15 (Utah 1986). It is the question of medical causation that is at issue in this case.

¹ These intermediate adjudicative actions are set out in Judge La Jeunesse's decision of March 6, 2006, and will not be restated here.

Workers' compensation proceedings often involve complex medical issues. For that reason, §34A-2-601 of the Act authorizes the Commission to appoint impartial medical panels to consider the medical aspects of such cases. The Commission's Rule 602-2-2 establishes the circumstances when the Commission will use its discretion to convene a medical panel. There is no dispute that the conditions of Rule 602-2-2 were satisfied in this case and that Judge La Jeunesse properly appointed a medical panel to consider the medical aspects of Ms. P.'s claim. What is in question is the degree of reliance that should be placed on the medical panel's report.

Ms. P. argues that Dr. Swenson's service as a panel member was improper and therefore tainted the panel's opinion. The basis for this assertion is Dr. Swenson's affiliation with "TOSH," the clinic where Ms. P. received her physical therapy. Ms. P. also reports that TOSH receives referrals from Healthcare, Ms. P.'s employer. However, Ms. P. has failed to explain how Dr. Swenson's ordinary professional relationship with TOSH had any actual effect on his impartiality or performance as a member of the medical panel, nor do Dr. Swenson's circumstances give rise to any reasonable perception of partiality. The Commission therefore rejects Ms. P.'s objections to Dr. Swenson's participation on the panel.

Ms. P. also challenges the substance of the panel's opinion. The Commission has reviewed that opinion, together with other medical information in the record. In evaluating the opinion, the Commission notes that the medical panel is not affiliated with either party in this dispute. Furthermore, the panel had the important advantage of access to all Ms. P.'s medical records and the opinions of the other health care professionals who treated or examined her. The panel also had the opportunity to personally examine Ms. P.. Finally, the panel brought together experts from different medical disciplines. With the foregoing foundation, the Commission is persuaded by the panel's collegial opinion that Ms. P.'s work accident did not cause her left arm problems. Consequently, Ms. P. is not entitled to workers' compensation benefits for such problems.

As a final matter, the Commission notes the complaints Ms. P. has lodged against Healthcare's representatives. The substances of those complaints, even if true, would not alter the Commission's determination that Ms. P.'s left arm problems are not compensable under the workers' compensation system.

ORDER

The Commission affirms Judge La Jeunesse's decision and denies Ms. P.'s motion for review. It is so ordered.

Dated this 27th day of April, 2006.

R. Lee Ellertson
Utah Labor Commissioner